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C O N F I D E N T I A L SECTION 01 OF 03 COTONOU 000617

SIPDIS

DEPARTMENT FOR AF/W ACOOK
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TAGS: [PGOV](#) [PREL](#) [KCOR](#) [KMCA](#) [PINR](#) [BN](#)
SUBJECT: BENIN: LEGISLATIVE AND JUDICIAL INERTIA HAMPER GOB
ANTI-CORRUPTION EFFORT

REF: A. COTONOU 452
[1](#)B. COTONOU 201
[1](#)C. 07 COTONOU 888
[1](#)D. 07 COTONOU 563 AND PREVIOUS

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Classified By: Ambassador Gayleatha Brown. Reasons: 1.4 (b&d)

[1](#)1. (SBU) SUMMARY: Judicial inertia and active resistance in Benin's National Assembly temper the positive impact of President Boni Yayi's ambitious anti-corruption and economic governance agenda. Political gridlock continues as opposition parties consolidate control of the National Assembly wrestled successfully from President Boni Yayi due in large part to defections from his FCBE political alliance (Ref A). By the 2008 municipal elections Yayi had lost the momentum garnered from triumphs in the March 2006 presidential and March 2007 legislative elections and now battles in the courts for control of disputed local council seats. The bureaucratic inertia casts a pall over the legislative, judicial and economic operations of the country, including Government of Benin (GOB) efforts to combat corruption. The majority of officials implicated in high-profile corruption cases by the GOB's State Audit Office (IGE) have not been prosecuted to the consternation of lead GOB anti-corruption officials. President Yayi's belated overtures to opposition party leaders in an effort to de-block the impasse have met with little success. The President and opposition parties are eager for donors to hear and support their relative positions. END SUMMARY.

//YAYI'S AGGRESSIVE ANTI-CORRUPTION CAMPAIGN//

[1](#)2. (U) In early 2006 at the beginning of his five-year term of office, President Yayi took bold steps to combat corruption. These steps included creation of the IGE, investigations by commissions of inquiry that resulted in referrals to the Public Prosecutor for indictment, and an attempt to lift parliamentary immunity of suspected high profile officials (Refs C and D.) Specifically, the IGE investigations linked some individuals suspected of misappropriating state funds to President Yayi. Cases against these individuals and others are stalled in court. In addition, President Yayi petitioned the National Assembly to lift parliamentary immunity for two suspected criminals among the deputies.

//TOP JURISTS BEMOAN JUDICIAL AND LEGISLATIVE INERTIA//

[1](#)3. (SBU) Clotilde Nougbo Medegan, President of the Benin

High Court of Justice, explained to EmbOffs that constitutional provisions dealing with the prosecution of high ranking officials are problematic. She said that the performance of the High Court of Justice is below expectations, because its members (who are also members of either the National Assembly or the Constitutional Court) lack the time to devote to their judicial duties. Medegan also bemoaned lack of swift prosecution cases related to the low number of magistrates at the Court of Appeals in charge of handling ordinary criminal cases as well as high-profile cases. She regretted that the law does not set a deadline for the investigating judges to submit the findings from their investigations.

¶4. (SBU) Medegan cited the example of Alain Adihou, a Minister under former President Kerekou's regime, who was imprisoned for almost three years after being accused of embezzling state funds. This case has stalled, because the National Assembly refuses to lift the immunity of a former minister and a deputy, suspected accomplices, to enable the investigating judges to call them before the court. She described the National Assembly as a &hideout8 for a number of deputies who would have been indicted and prosecuted before being elected if the investigating magistrates had done their work on time and if there was no blockage at the Assembly level. She regretted that the country's laws do not guarantee equality of justice for all but instead sets one standard of justice for ordinary citizens and another one for members of the Executive and the National Assembly.

¶5. (SBU) On July 15, 2008, Jean-Baptiste Elias, President of the anti-corruption watchdog, &Observatoire de lutte contre la corruption8 (OLC), told us that the corruption cases of two parliamentarians, Luc Da Matha Santana and Celestine Adjanooun, were still pending before Court. The two

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suspects had been the Deputy and Managing Directors respectively of the Benin Electric Energy Corporation (SBEE) before their election to the National Assembly. In June 2007 a government audit of the SBEE revealed evidence that they improperly awarded a contract worth USD 6 million (3 billion CFA). Elias stated that the judicial system was handling the case appropriately, though the judicial police in charge of the investigation have complained of a lack of adequate resources to conduct proper investigations. He pledged that the OLC would continue to lobby to get the immunity of the two deputies lifted.

¶6. (SBU) Elias did not question President Yayi's political will to curb corruption. He deplored, however, that Yayi's efforts are constrained by slow procedures in the judicial branch and the tendency of the civil service to appoint incompetent political appointees to key positions. However, during a July 9 press conference, Elias bemoaned the fact that so far the government has not taken any disciplinary action against the civil servants that the State Inspectorate General, IGE, suspected of embezzling public funds. He said that some of those were even promoted to higher positions in the civil service.

¶7. (U) In a related corruption case, Elias regretted that the Ministry of Mines, Energy and Water ordered payment of allowances to the former director of Benin Water Corporation (SONEB), Allassane Baba Moussa, who had been fired by President Yayi in June 2007 over mismanagement allegations. (BEGIN NOTE: Baba Moussa had retired from the civil service before the GOB appointed him as the Director of SONEB. Therefore, under the fixed-term contract both parties signed, he was not entitled to the termination payment paid to departing civil servants. END NOTE.)

¶8. (SBU) Yayi's options are limited, but he has, via the Ministry of Justice, Legislation and Human Rights, the authority to reinforce the staff of the investigating body of the Court of Appeals by appointing new judges. A Ministry of

Justice source confirmed that about thirty newly recruited magistrates were deployed this year to enhance the capacity of the judicial system. Modifying the immunity-related provisions in the constitution would help also to accelerate the prosecution of allegedly corrupt legislators. However, to attain this goal, President Yayi must submit the constitutional amendment decision to a public referendum or introduce it by a 4/5 majority in the Parliament. Constitutional experts already presented to Yayi a thorough analysis regarding specific provisions in the constitution for amendment. The proposed amendments might well cover the issue of parliamentarians, immunity, but the question is whether the National Assembly's deputies would approve a constitutional change that would expose them to prosecution by the High Court of Justice.

¶9. (SBU) COMMENT: There is a widespread perception that the parliamentary stalemate and slow judicial prosecution have tempered President Yayi's stance against corruption, notwithstanding his frequent public statements condemning corruption and reiterating commitment to combat it. In point of fact, he is between a rock and a hard place. For example, a recent recourse to a constitutional emergency clause allowed him to bypass the parliament to push through urgent legislation, a move immediately restricted by the National Assembly (Ref A). Staffing the investigating body of the Court of Appeals should help to improve the situation. Also, modifying the immunity provisions in the constitution would help accelerate the prosecution of corruption cases. The country's constitution authorizes the President of the Republic as well as the National Assembly to initiate laws and to amend the constitution, but they must work together to do so. END COMMENT.

//OPPOSITION ALLEGEDLY SEEKS KICK-BACKS FOR POLITICAL SUPPORT//

¶10. (C) Political intrigue, avarice, resistance to good governance and transparency, and power grabs at all cost regardless of the consequences for the people of Benin, characterize the impasse between President Yayi and his adversaries in the opposition parties. On the surface, the problem relates to differences over decentralization policy, contested municipal elections, closeness of the National Assembly President to Yayi, and poor administration. Below

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the surface, there also is resentment over the GOB's anti-corruption efforts, including termination of illegal kick-backs from various government operations and lack of opposition party representatives in the GOB. In former RB leader President Soglo's case, he resents his former employee Yayi's perceived &disrespect8 since taking power in neglecting to seek Soglo's counsel and by including Soglo's son in the GOB as Sports Minister without prior consultation. Others claim that Yayi is a dictator who wants control over all government revenue and resources for his own ends.

¶11. (C) On September 16, Yayi sent GOB Secretary General Victor Topanou to brief the Ambassador on the government's side of the story. He claimed that in exchange for de-blocking the gridlock at the National Assembly three G-13 members have asked Yayi specifically for control over the Port of Cotonou, including kickbacks from the revenue on imported second hand cars) a multi-million dollar operation. The RB, he said, wants the large, lucrative Dantokpa market in Cotonou, and MADEP wants access to revenue from SONACOP and the Cotonou International Airport. Yayi has refused.

//CONSEQUENCES OF THE POLITICAL IMPASSE//

¶12. (C) This impasse also hampers donors, ability to function effectively. In the USG case, the National Assembly's deadlock has meant delay in passing legislation

required for implementation of the MCA-Benin Access to Justice Project. (Note: On September 25, the Ambassador and MCA-Benin National Coordinator chaired closed (ministers only) and open performance reviews) with key GOB ministers of the first two of the five year MCA Compact. The Finance Minister, chief GOB representative, noted the parliament's recent extraordinary work on the relevant legislation that is expected to be approved in the near future. The EU struggles to support the government's effort to produce a national electronic voter registration list (LEPI) and is floating the idea of donor support for an outside mediator in an effort to break the logjam.

¶13. (C) There are more ominous security-related consequences to Yayi's anti-corruption stance. For example, on a recent overland trip to Zou and The Collines Departments to open USG-funded health centers, the Health Minister told the Ambassador of an armed attack on his vehicle last year on the same road. He accused hired assassins in the pay of the &mafia8 that has run a kick-back scheme on GOB medicines and hospital equipment procurement who resent his anti-corruption efforts. For this reason, the Minister's wife and children now live in Paris. On the up side, recently the World Bank reported a net improvement in the corruption indicator for the country, a reflection of the significant impact of President Yayi's anti-corruption stance in Benin.

BROWN